



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

972 CRIMINAL APPEAL NO. 743 OF 2003

The State of Maharashtra
Through PSO Police Station
Sonpeth, Dist. Parbhani.

....Appellant
(Ori. Complainant)

VERSUS

1. Prakash S/o Vishwanath Jadhav,
Age: 28 years, Occu. Agriculturist.
2. Manik S/o Vishwanath Jadhav,
Age: 35 years, Occu. Agriculturist.
3. Achut S/o Vishwanath Jadhav,
Age: 22 years, Occu. Agriculturist.
4. Vaijanath S/o Abaji Jadhav,
Age: 45 years, Occu. Agriculturist.
5. Pratap S/o Vaijanath Jadhav,
Age: 29 years, Occu. Agriculturist.
6. Kesharnath S/o Dashrath Karhale,
Age: 35 years, Occu. Agriculturist.

.....Respondents
(Ori. Accused)

.....
Adv. G. A. Kulkarni, APP for for Appellant-State
Adv. N. K. Kakade, Advocate for Respondent Nos. 1 to 6.
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**CORAM : SANDIPKUMAR C. MORE AND
VAISHALI PATIL-JADHAV, JJ.**

RESERVED ON : 23 July, 2026

PRONOUNCED ON : 21 August, 2026

Judgment (PER : SANDIPKUMAR C. MORE, J.) :-

. The Appellant-State has challenged the acquittal of respondents accused in this appeal, recorded by learned Sessions Judge, Parbhani (hereinafter referred to as, “the learned Trial Judge”) in Sessions Case No. 185 of 2001 under the judgment and order dated 25.07.2003.

2. According to the prosecution story, one Dnyanoba Haribhau Jadhav an agriculturist from Gaundgaon was going to his field from his house at about 9:00 p.m. on 09.04.2001. On the way to his field he stopped to purchase cigarette from the shop of one Thoraji Karhale. At that time, all the respondents-accused came there and on account of previous enmity, they assaulted Dnyanoba with iron bars and sticks on his legs, hands and head. In the said assault, he sustained severe injuries and therefore his relatives took him to the Rural Hospital, Gangakhed. In the said hospital, head constable Uttam Bhusare, i.e. PW-4, recorded his statement on the same day at about 11:45 p.m. in the presence of Dr. Shyam Nagapurkar, i.e. PW-7. However, due to his critical condition, he was shifted to Ambejogai Hospital and from there to Aurangabad Hospital where he succumbed to his injuries. On the basis of the statement of

Dnyanoba initially Gangakhed Police had registered crime under Zero number against the respondents-accused under Sections 147, 148, 307 and 149 of the Indian Penal Code and then transferred the same to Sonapeth Police Station. However, on the death of Dnyanoba, offence under Section 307 was converted into Section 302 of Indian Penal Code. Accordingly, the concerned police station started an investigation and on completion of investigation, the respondents-accused were charge-sheeted for the offence under Sections 147, 148 and 302 read with Section 149 of I.P.C. The learned Trial Judge then conducted the trial and recorded evidence of in all ten witnesses, but ultimately acquitted all the respondents-accused, as the prosecution failed to prove its case beyond reasonable doubt.

3. The learned APP vehemently argued that the learned Trial Judge had not appreciated the evidence on record in a proper manner and though there was evidence of all three eye witnesses coupled with the trustworthy dying declaration of the deceased, the learned Trial Judge committed grave error in acquitting the respondents-accused by ignoring the same. He pointed out that PW-1 Janabai daughter of Dnyanoba Jadhav had arrived on the spot of the incident and saw the respondents-accused assaulting

his father with iron bars and sticks. Her cousin Achut s/o Venkatrao Karhale i.e. PW-5 as well as PW-6 Vaijanath s/o Nagorao Jadhav i.e. uncle of the deceased had also supported her evidence by witnessing the incident. According to him, all these eye witnesses have corroborated each other on material aspects. Moreover, recovery of weapons was also there at the instance of the accused. He further pointed out that PW-4 head constable Bhusare and PW-7 Dr. Shyam Nagapurkar had also established the fact that Dnyanoba was fit to give a statement in Gangakhed Hospital and accordingly, his statement treated as dying declaration at Exh. 44, which clearly indicated that the respondents-accused had assaulted him with iron rods and sticks due to previous enmity. He pointed out that, the respondents-accused namely Prakash, Manik and Achut are the sons of Vishwanath, who was murdered prior to 10 to 12 years and the deceased Dnyanoba was accused in that murder case. As such, he pointed out that the respondents-accused were having the reason to assault the deceased. Thus, he prayed for reversal of the judgment of acquittal and to convict the respondents-accused under the aforesaid offenses. He placed reliance on the judgment in the case of ***Laxman Vs. State of Maharashtra*** reported in ***(2002) 6 SCC 710***

4. On the contrary, the learned counsel for the respondents-accused supported the acquittal of the respondents-accused recorded by the learned Trial Judge. He pointed out that Dnyanoba, being severely injured, was not at all in condition to give a statement. Moreover, the endorsement given by PW-7 Dr. Shyam Nagapurkar was without signature, making the entire dying declaration highly suspicious and doubtful. According to him, the testimonies of PW-5 and PW-6 are also doubtful, since their presences on the spot appeared doubtful. According to him, all these witnesses stated that on hearing shouts, they reached the spot of the incident and saw the respondents-accused assaulting Dnyanoba. However, admittedly one religious ceremony (Saptah) was going on the village at the relevant time and there was the use of loud speakers, making it difficult for them to hear the shouts from their respective houses. He further submitted that no independent witness from the locality has been examined by the prosecution despite the incident took place in a public place surrounded by shops and houses. He pointed out that PW-2 Abaibai cited as an eye witness, did not support the case of the prosecution. According to him, the recovery of alleged weapons used in the commission of crime is also not sufficient to connect the respondents-accused with the crime, since no blood link was

established in the CA report regarding the incriminating articles. Ultimately, he submitted that the learned Trial Judge rightly appreciated the evidence on record and properly extended benefit of doubt to the respondents-accused. Accordingly, he prayed for dismissal of the appeal.

5. Heard. Rival submissions and also perused the entire evidence on record along with impugned judgment with the able assistance of learned APP as well as learned counsel Mr. Kakade.

6. The prosecution has examined in all ten witnesses. However, the case of prosecution is based on three major grounds. Firstly, there is a dying declaration on record, wherein, the deceased had stated as to how all the respondents-accused assaulted him with iron bars and sticks on account of past enmity, making him severely injured. Secondly, there are three eye witnesses, namely PW-1 Janabai, i.e. the daughter of the deceased, PW-5 Achut, who is nephew of the deceased and PW-6 Vaijanath, who is the uncle of the deceased. All these eye witnesses have deposed that as to how the deceased was assaulted by the respondents-accused. Thirdly, the prosecution relied on the recovery of weapons at the instance of the accused. As against this, it is the case in defense that the dying

declaration was unreliable due to the unfit condition of the deceased while making the same and there were contradictions among the eye witnesses.

7. Admittedly, from the post-mortem report at Exh 72 and testimony of PW-9 Dr. Kailash Zine, who conducted the post-mortem, it revealed that, the death of Dnyanoba was a homicidal one, since he died from head injury with multiple bone fractures leading to acute renal failure. PW-9 Dr. Zine has also ruled out the possibility of sustaining such injuries due to a vehicular accident. Moreover, the defense taken by the respondents-accused that Dnyanoba died of accident, is not supported by any theory. Thus, it is clearly evident that the death of Dnyanoba was homicidal. However, it has to be seen in the light of other evidence, whether the respondents-accused person were responsible for the same.

8. So far as, involvement of the respondents-accused in the incident is concerned, the dying declaration of the deceased is on record at Exh. 44. According to the prosecution, when the deceased was taken to Gangakhed Hospital immediately after the incident, PW-4 Head Constable, Mr. Bhusare had recorded the said dying declaration in the form of a statement. On going through the said

dying declaration, it is clearly evident that the deceased had stated therein as per the prosecution story. However, learned counsel for the respondents-accused disputed the said dying declaration as being unreliable. As such, the evidence in respect of the said dying declaration needs to be scrutinized.

9. PW-4, Uttam Namdeo Bhusare was the Police Head Constable at the relevant time, attached to Gangakhed Police Station, has deposed that, as per the letter dated 09.04.2001, he went to record the statement of Dnyanoba, wherein the deceased had stated so. However, in the cross-examination he admitted that, though he was attached to Gangakhed Police Station, but he wrote "Police Station, Sonpeth" on his own in said dying declaration. Moreover, it has also come on record that the deceased was not in a fit mental and physical condition to give such dying declaration, since as per the doctor's opinion, his BP was unrecordable, the pulse was impalpable and he was in shock. Moreover, it is also important to note that PW-4 had stated that he had obtained the opinion of doctor about the fit condition of the deceased for giving the statement. The doctors fitness certificate is at Exh. 53. The said dying declaration is without signature. Even PW-7 Dr. Shyam Nagapurkar has admitted the said fact. Thus, the doctor in the

cross-examination had given certain admissions that the BP and Pulses of the deceased injured were unrecordable and the patient was in shock. He has specifically admitted that the condition of Dnyanoba at the time of his examination was critical and thereafter, the patient was immediately transferred after recording of the alleged dying declaration.

10. Though the learned APP placed reliance on the judgment of Hon'ble Apex Court in the case of **Laxman Vs. State of Maharashtra (supra)**, wherein it is held that mere absence of doctor's certification as to the fitness of declaration of state of mind would not ipso facto rendered the dying declaration unacceptable, but it is also observed, further that the evidentiary value of such declaration would depend on the facts and circumstances of the particular case. In the instance of the aforesaid admission on the part of PW-4 Head Constable Mr. Bhusare and PW-7 Dr. Shyam Nagapurkar, it is evident that the condition of Dnyanoba at the time of his admission to the hospital was so critical that the possibility of giving such elaborate statement by telling the names of all the accused was very less, and therefore, the dying declaration (Exh. 44) appears doubtful.

11. So far as the evidence of eye-witnesses are concerned, admittedly, all of these are closely related to the deceased, as mentioned above. It is settled that the evidence of such witnesses merely because they are close relatives of the deceased, cannot be thrown out, but it has to be scrutinized with great care and caution. PW-1 Janabai, who is the daughter of deceased, has stated that after she heard cries, she rushed to the shop of Thoraji and saw all six accused beating her father with iron bars and sticks. When she tried to intervene, she was also kicked, but somehow shifted the deceased to the hospital. However, there are certain contradictions in her evidence as regards the timing, presence and unnatural conduct. It has come on the record during the cross-examination of these witnesses that a religious ceremony (Saptah) was going on at the time of the incident and use of loudspeakers was their in the said ceremony. Therefore, it was very difficult for a person to hear the cries from the house which was at some distance from the spot of incident. Moreover, PW-1 had stated in the cross-examination that when she saw all the respondents-accused assaulting Dnyanoba, she tried to cover the deceased and at that time she was also beaten by the accused. However, she was not at all referred to medical treatment, and therefore, it can safely be inferred that she was not present at the time of the actual

incident, but might have come at the spot after the incident was over.

12. Same is the case of another eye witness i.e. PW-5 Achut, who is the nephew of the deceased. Though he stated that when he was sitting near the school, he heard cries and saw five accused assaulting Dnyanoba and helped to shift him to hospital but reference of only 5 persons has come in his evidence, however, the prosecution is claiming that there were in all six accused. He did not state anything about the presence of PW-1 Janabai and when the religious function was going on, at the time of the incident, it was highly difficult for him to hear the cries, as stated. Therefore, considering these facts, his presence on the spot of the incident at the relevant time also appears doubtful. PW-6 Vaijanath is also cited as an eyewitness, who stated that accused Nos. 1 to 3 beat Dnyanoba with an iron rod and accused Nos. 4 and 6 assaulted him with sticks, but his conduct of not intervening in the incident of rescuing the deceased from the clutches of accused appears doubtful. Moreover, in the cross-examination he also did not mention the presence of PW-1 Janabai on the spot. Therefore, considering the distance of his house from the spot of incident, it was not possible for him to hear cries of the deceased from his own

house. Therefore, these facts also support the fact that he might not be present at the spot of the incident. As such, if the evidence of the eye witnesses is scrutinized minutely, then it gives the impression that they were not present on the spot to witness the incident.

13. It is significant to note that the prosecution besides these eye witnesses, who are relatives of the deceased, has examined one independent witness, i.e. PW-2 Abaibai, who is the sister of shopkeeper Thoraji. However, this independent witness had not supported the case of the prosecution and according to her, the shop of Thoraji was closed at the time of the incident. As such, there is no corroboration to the evidence of eye-witnesses from this independent witness.

14. The prosecution has also relied on recovery of weapons at the instance of the accused. PW-8 Bhagwan has stated to that effect. According to him, the accused persons made disclosure statements about the places where the weapons, comprising iron bars and sticks, were hidden and thereafter produced from their respective houses. Though this witness has stated so, the recovery of such articles which are common household and agricultural items, from

the respective houses of the accused, cannot be given much weightage to convict the accused without other corroborative evidence. As per the scientific evidence, no blood links were established in respect of these allegedly recovered articles. Further, the Investigating Officer, i.e. A.P.I. More has admitted in the cross-examination that he did not examine independent witness and also did not seize the clothes of eye witness, who were in close proximity to the deceased and their clothes might have stained with blood. The CA report at Ex. 79 also indicates that no blood was found on the seized articles. In such circumstances, considering all these aspects conjointly, it gives the impression that the dying declaration is surrounded with clouded circumstances. Moreover, the evidence of eye witnesses is also contradictory to each other and the recovery also does not inspire confidence. The alleged motive put forth by the prosecution, that the deceased was accused in the murder of father of one of the respondents-accused, is also not supported by the evidence of recent disputes between the parties. Moreover, it is found that the witnesses were also unaware of current relations between the parties. Therefore, it appears that the prosecution has not proven the guilt of the respondents-accused beyond reasonable doubt. Moreover, in the principles of Criminal jurisprudence, there is a presumption of innocence and unless the

prosecution proves its case beyond reasonable doubt, the accused cannot be convicted. Further, if two views are possible, then the view which is favorable to the accused has to be chosen. Therefore, considering the overall evidence, it appears that the learned Trial Judge has rightly given the benefit of doubt to the respondents-accused.

15. It is also settled that when an inference is drawn by the learned Trial Judge by appreciating the evidence on record in the proper manner, then in the appeal from acquittal, it is not supposed to be disturbed unless there is gross negligence on the part of the learned Trial Judge and ignorance of the material evidence. Here, in this case, the learned Trial Judge, after considering the evidence on record, appears to have taken a possible view and therefore, it cannot be disturbed in the appeal merely because the other view is possible. Therefore, we find that the appeal is devoid of merits and accordingly, it stands dismissed.

(VAISHALI PATIL-JADHAV, J.) (SANDIPKUMAR C. MORE, J.)